

Land Transfers in the Department of Energy
State and Tribal Government Working Group
Stewardship Committee
October 2001

OVERVIEW

The STGWG Stewardship Committee has questioned the effectiveness of DOE policies regarding transfer of facilities or properties from DOE EM to other entities. In order to better understand what the issues regarding transfers might be, the Committee surveyed STGWG membership and conducted some follow up investigations of selected past or planned land transfers.

From the survey and investigations, the following general conclusions are presented:

- Significant confusion exists regarding the actual transfer, adequacy of terms, and role definition.
- Transfer terminology and processes are not consistent among sites.
- Information regarding transferred properties is not readily accessible.
- Federal agency “ownership” of a site is not clearly defined or understood.
- For most sites, how long-term controls will work and who will implement them is not fully understood.

RECOMMENDATIONS

Based on the STGWG Survey and additional research into land transfers at DOE facilities, the committee recommends that additional effort be directed to the following:

1. A fact sheet describing land transfer policies, requirements and terminology should be developed for both internal DOE and external stakeholder use.
2. Information regarding land transfers needs to be readily accessible for future review. The Recent and Planned Departmental Land Disposals table should be expanded to include cross-references, contamination status and required long-term actions.
3. Additional investigation is needed to define specific characteristics of federal agency “ownership” of property in relation to property transfer issues. Particular attention should be addressed to differing capabilities of different agencies in terms of implementing non-mission activities, and to the transfer of liability among agencies.
4. Continued investigation of long-term controls at federal facilities is needed.

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BACKGROUND

The STGWG Stewardship Committee has questioned the effectiveness of DOE policies regarding transfer of facilities or properties from DOE EM to other entities. In order to better understand what the issues regarding transfers might be, the Committee surveyed STGWG membership and conducted some follow up investigations of selected past or planned land transfers.

STGWG LAND TRANSFER SURVEY

The STGWG membership represents sixteen states and nine tribal governments impacted by DOE facilities. These facilities tend to be the larger, more controversial sites, and therefore the survey represents a biased sample. Survey results are summarized in Table 1.

Ten sites were addressed by responses from a total of eight states and two tribes. For Hanford, responses were received from two states and one tribe. In general, eight of the ten sites have had or expect land transfers (INEEL and Fernald do not). Of the sites with existing transfers, three (Hanford, Mound and LANL) are thought to have effective agreements specifying long-term responsibilities. For sites with anticipated transfers, the perceived adequacy of agreements, participation in the process and role definition is very mixed.

Of particular note were the sites with multiple responses (Hanford and LANL). In both cases, different respondents had completely different interpretations for the status of the transfer, the adequacy of long-term mechanisms, the degree of public participation, and/or the clarity of role definition.

It appears that the transfer terminology and processes are not consistent among sites. These inconsistencies may be necessary due to the varying legal context of different site transfers, but appear to significantly increase the confusion regarding the transfer.

DOE RECORD OF LAND DISPOSALS

In addition to the STGWG survey, the Stewardship Committee reviewed DOE's information regarding land transfers. The DOE's Real Property unit maintains a listing of Recent and Planned Departmental Land Disposals, shown in Table 2.

Most of the properties transferred since 1991 were clean properties, transferred under specific legislation or using 'standard' excess property procedures. Nearly half of the listed transfers were driven by specific legislative direction. Many of these land transfers have been associated with LANL, Hanford or Oak Ridge, where DOE relinquished property to the local communities.

In follow up for specific sites, the information regarding transferred properties is not readily accessible. In particular, it is generally difficult to determine how the transferred properties were determined to be clean, and what standard was applied to this definition.

SPECIFIC TRANSFER SITE ISSUES

The STGWG survey results and the review of the DOE Recent and Planned Departmental Land Disposals raised questions for land transfer activities at specific facilities. Additional investigation at specific sites resulted in additional information, as described below.

Hanford

Hanford property has been transferred to the Port of Benton to bolster the local economy, and a portion of the site, the Hanford Reach National Monument, has been transferred to the US Fish & Wildlife Service via a Memorandum of Understanding (additional details are being resolved). Neither of these properties has long-term stewardship requirements, but significant CERCLA-based issues remain. One includes the need for additional ecological monitoring based on tribal uses. In addition, some property in the Hanford Reach is actually “owned” by the Bureau of Land Management or the Bureau of Reclamation, not the DOE.

Los Alamos National Laboratory

Historically, land has been transferred from the LANL to create Los Alamos County. In 1997, Congress passed PL 105-119, which requires LANL to identify portions of the property suitable for transfer to Los Alamos County and the Pueblo de San Ildefonso. While prior land transfers were done without specific stipulation of continued DOE liability for contamination, the 1997 law sets up a process for defining future land use and setting clean up levels appropriate for those uses.

If, prior to conveyance and transfer, a recipient notifies DOE of its intent to change a contemplated land use, DOE will determine whether additional cleanup is required for the new contemplated land use, and DOE will conduct the clean up if appropriate and feasible pursuant to the provisions of Public Law 105-119. In the event the contemplated land use has been changed after clean up has been completed to the satisfaction of the NMED, discussions would occur between DOE and the recipient as to what level of additional clean up is required to meet the new land use based on the agreement signed between the parties to transfer the property. (Summary of Land Conveyance and Transfer Report, LA-UR-99-1018, August 1999)

DOE continues to fund and perform characterization and remediation associated with historically transferred properties where contamination issues exist.

Mound Facility

The Sales Agreement between DOE and Mound-Miamisburg Community Improvement Corporation (MMCIC) dated January 23, 1998 is a general document describing the plans for the property transfer. Each parcel of property that is released has a Record of Decision (ROD) signed by DOE, Ohio and USEPA that comes with a set of land use controls. Basically, these controls are as follows:

1. Land use is limited to commercial/industrial with definitions (no day care, etc).
2. No ground water use is allowed.
3. No soil can be removed from the property without being tested and receiving approval from the State- this is to avoid construction/ landscaping activities from taking contaminated soil offsite where it would no longer be controlled.
4. The usual provisions for DOE, USEPA and the State to have access to the properties for monitoring and inspections.

Four parcels have been released, counting one that is currently in final sign-off. DOE is currently doing an annual review and report on LTS issues for the released properties. DOE is still recognizing, developing, and expanding their understanding of their long-term roles.

DOE will be on site until at least 2006, so there is some time to work these issues out. The RODs state that the restrictions will be placed in the deed and the City and MMCIC may also add these to

local zoning (more layers). State legal staff confirm that deed restrictions can be enforced through common property law. DOE is under the obligation to do annual LTS inspections (with regulator participation) and prepare annual reports. In the future, DOE can propose a reduced frequency. Long term funding for this effort is an issue that has not been resolved. Some new tools may be required to support this effort in the next few years. Any additional remediation found to be necessary after the date of the deed shall be conducted by DOE. This is captured in the ROD and the Quitclaim Deed.

The Mound Land Transfer Process is laid out in some detail at:
http://www.doe-md.gov/prsinfo/1_prsdata/zip/index.htm .

Oak Ridge Reservation

Historically, land has been transferred from the DOE or Atomic Energy Commission to the City of Oak Ridge and sold to private parties for economic development purposes. The majority of these transfers have included clean property, meaning no soil contamination, but some groundwater restrictions are in place. In addition, DOE has leased property for industrial use that is contaminated at levels that permit those uses. DOE retains the ownership of the property, and will remain liable under CERCLA for future remediation. Transfers of property from the NPL site at Oak Ridge are conducted pursuant to the 120 (h) provisions of the CERCLA statute.

In addition to transfers and leases, there are certain administrative agreements that are associated with land management. DOE has provided approximately 4000 acres to the State of Tennessee to be managed by the Tennessee Wildlife Resources Agency (TWRA). Much of the 34,000 acres is designated as a National Environmental Research Park (NERP).

Pinellas Plant

In 1995, DOE sold the Pinellas Plant to the Pinellas County Industrial Council. Decommissioning of the facility had been largely completed; however some residual contamination remained at the time of sale and groundwater remediation was continuing. The sales contract specified that DOE was solely responsible for complete decontamination of the facilities, as well as any contamination discovered later, and ongoing or additional remedial or corrective actions. “Complete decontamination” shall be deemed to be the removal or reduction of contamination on the Premises and in any of the improvements consistent with and appropriate to the site’s use as an industrial park as negotiated with EPA or DEP, as applicable.” Ongoing remediation is addressed in the RCRA Corrective Action permit, currently up for its first ten-year renewal.

The contract was specified to be not recordable. “Neither this contract nor any notice thereof shall be recorded in the Official Records of Pinellas County, Florida.” However, the deed is recorded. This language relates to Florida law, and DOE did not want to complicate the deed with contract language.

Rocky Flats Plant

In 1993, the Rocky Flats Plant (RFP) transferred landlord responsibility for a portion of the site used as the National Wind Technology Center (NWTC) to the National Renewable Energy Laboratory (NREL), also a DOE entity. The transfer agreement noted that the Rocky Flats Plant “shall be granted unrestricted access to the NWTC should local environmental restoration be required.” RFP was placed on the National Priorities List in 1980, but this portion of the site is not expected to be contaminated. However, the agreement did not address characterization requirements or NPL delisting, nor was the EPA or state consulted in the transfer. NREL is currently in discussions with EPA and the state regarding this delisting.

UMTRA Sites in Colorado

Six of the nine UMTRA sites in Colorado were transferred to the State following cleanup, in accordance with the UMTRA law. Three of the sites (two at Slickrock, and Naturita) were determined to not represent a significant value to the landowner either clean or dirty, and therefore, were not required to be transferred to the state after cleanup.

For Grand Junction, Gunnison, Durango (2), and Rifle (2), the state has transferred (or is transferring) the property to a local government. The deed for each transfer is annotated to include provisions for public use of the property, restrictions on future sale of the property, continued compliance with UMTRA, restriction of groundwater use, restriction on excavation, and provision for structures to be designed with radon control measures. No provision or funding exists for continued state oversight.

Table 1
STGWG Land Transfer Survey (5-14-01)

Question/Site		Fernald	Hanford (NP)	Hanford (OR)	Hanford (WA)	INEEL	Kansas City	LANL	Mound	Oak Ridge	Ports-mouth	Rocky Flats	Weldon Spring
1. Has the DOE transferred ownership of property with contamination or continuing remedial or LTS activities to another entity?		No	Yes	Unclear	No	No	No	Yes	Yes	No	No	No	No
If yes, to:	US BLM												
	US Forest Service												
	US Fish & Wildlife		X										
	US Dept of Defense												
	other DOE												
	other Federal												
	Community Reuse Organization								X				
	local government							X					
	state government												
	Tribal government							X					
	Educational institution												
	Other												
2. Is there a transfer agreement that specifies	Yes		X					X	X				

Table 1
STGWG Land Transfer Survey (5-14-01)

all required continuing activities or institutional controls and assign roles for them?	No				X		X			X			X
	Unknown to Responder			X									
3. If yes, are continuing activities effectively performed?	Yes		X						X				
	No												
	Unknown to Responder							X					
4. Does the DOE plan to transfer ownership of property with contamination or continuing remedial or LTS activities or institutional controls to another entity?	No	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
If yes, to:	US BLM												
	US Forest Service												
	US Fish & Wildlife			X								X	
	US Dept of Defense						X						X
	other DOE												
	other Federal												
	Community Reuse Organization			X					X	X	X		
	local government			X				X		X			
	state government												X

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	Tribal government			X				X					
	educational institution						X						X
	other												
	unknown or unspecified		X										
5. Has the DOE identified transfer mechanisms for continuing activities?	Yes								X				
	No			X	X		X				X	X	X
	Unknown to responder		X					X		X			
6. Has the DOE involved the affected parties appropriately in these plans?	Yes		X					X	X			X	
	No			X	X					X	X		X
	Unknown to responder						X						
7. Are roles for all parties clearly defined and documented?	Yes		X										
	No			X	X			X		X	X	X	X
	Unknown to responder						X		Under review				

Table 2
Recent and Planned Departmental Land Disposals
By Fiscal year (as of 8-22-01)

Fiscal Year	Name	Type	Size	Value	Description of Disposal
FY 1999 to 2013 est	TA-74	Land	2715 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County and Pueblo de San Ildefonso; Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	Site 22 & Manhattan Monument site	Land and pavilion	<0.5 Acres and 150 sf	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	White Rock Y	Land	540 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	Rendija Canyon	Land and Shooting Range	910 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	White Rock	Land and Utilities	100 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	Airport	Land and Facilities	205 Acres and 8781 sf	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	LAAO Office Bldg TA-43-39	Land and Facilities	15 Acres and 44,349 sf	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	DP Road Site	Land	50 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 1999 to 2013 est	TA-21	Land and Possibly Facilities	260 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.

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FY 2005 to 2008 est	Fernald Environmental Management Project	Land	approx. 25 Acres	Probably will be sold at less than Fair Market Value	Value as agricultural land will be diminished by clean-up activities and remaining encumbrances.
FY 2006 to 2010 est	Rocky Flats Environmental Remediation Technology Site	Land and as few as zero or many as five Facilities	approx. 6200 Acres	Probably will be designated as permanent open space by legislation (Submitted in 106-107 Congress)	Surrounding communities want site for permanent open space.
FY 1999-2006 est	Mound Plant Site (Phased Transfer) 40% by 2002 75% by 2003	Land and 125 Facilities	306 Acres and 1.3 million sf	Phased sale for a \$10.00 consideration	Contract for sale Jan-98. Phased disposal in-sync with clean-up/EPA certification. 15 acres transferred in Jan 1999.
FY 2010 est	Grand Junction Uranium Leasing Program	Land	7,755 Acres	Relinquishment of withdrawal to BLM	Reported
FY 2003 est	Naval Petroleum Reserves #3 Transfer	Land	9,481 Acres	Legislated disposal. Relinquishment of withdrawal to DOI	Under FY 2000 Appropriation Bill
FY 2002 est	Grand Junction Uranium Leasing Program	Land	1,408 Acres	Relinquishment of withdrawal to BLM	Reported
FY 2001 est	Grand Junction Uranium Leasing Program	Land	6,088 Acres	Relinquishment of withdrawal to BLM	Reported
FY 2001	LANL Water System	Land, wells, pipelines	215 Acres	Legislated disposal No consideration	PL105-119 Transfer to Los Alamos City/County Date of disposal dependent on NEPA analysis and clean-up completion.
FY 2001	ORO Boeing flood plain	Land	182 Acres	\$9,828 Fair Market Value	Clean Site Determination made pursuant to CERCLA 120 (h) (4).
FY 2001	Monticello Mill site and Vicinity Properties	Land	858.5* Acres	Transferred to City of Monticello by GSA Land to Parks for golf course	EM Clean-up is complete.

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FY 2001 est	Rocky Mountain Oilfield Testing Center (NPR#3)	Facilities	68,157 sf	Fair Market Value	Planned Privatization
FY 2001 est	Weeks Island Site, LA	Land and Facilities	413 Acres and 43,090 sf	Will dispose of at Fair Market Value	GSA will dispose of land and facilities at the former storage site. They are now doing a legal review the documents. Any proceeds from this sale will go to the Treasury. The schedule is to complete this sale by the end of the fiscal year Sept 2001.
FY 2001	ORNL to UT-Batelle	Land	10 Acres	Consideration	Land will be used for the construction of three new laboratory buildings pursuant to CERCLA 120 (h) (3). Covenant deferral request was approved by the State.
FY 2000	Grand Junction Uranium Leasing Program	Land	5,619 Acres	Relinquishment of withdrawal to BLM	Reported
FY 2000	Grand Junction Office Site	Land and Facilities	55.71* Acres	Planned sale to City for no consideration	EM Clean-up is not complete. Agreement for sale signed 12-4-2000. Early transfer authorized. Actual sale & lease docs not yet finalized as of 8-22-01
FY 2000	Grand Junction Office Site	Land and Facilities	7 Acres	Transferred to Army Reserve	No cost transfer 10-2000.
FY 2000	Naval Oil Shale Reserves #2 Transfer	Land	83,161.85 Acres	Legislated disposal to Northern Ute Tribe	Under FY 2000 Appropriation Bill
FY 2000	Naval Oil Shale Reserves #2 Transfer	Land	5,000	Legislated relinquishment to DOI	Under FY 2000 Appropriation Bill
FY 2000 est	Naval Oil Shale Reserves #3 Transfer	Land and Facilities	14,130 Acres and 7,858 sf	Possible legislated disposal Relinquishment of withdrawal to DOI	Under FY 2000 Appropriation Bill
FY 1999 est	Self Sufficiency Parcel #8 or H	Land	94 Acres & separate 1 Acre	Will dispose of at Fair Market Value approx. \$375,000	Section 161g of AEC for self-sufficiency program to City of Oak Ridge for industrial purposes

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FY 1999 est	New Brunswick NJ	Land	5.6 Acres	Unknown	Completed FUSRAP Site, transferred to COE
FY 1999 est	LANL-s 133 mile long Gas Pipe Line	Easement for 10-12 inch pipeline	564* Acres	Fair Market Value	Excess property disposal proceeds of the gas line were used toward the purchase of gas line transportation costs to LANL.
FY 1999 est	Bldg 747 Area and Facility (Hanford)	Land and Facility	1.6 Acres and 5,068 sf	Will dispose of at Fair Market Value	Site will retain access through a lease to the whole body counter.
FY 1999	Oak Ridge Two Tracts	Land	3.5 Acres	Will dispose of at Fair Market Value	Normal excess property disposal.
FY 1999	Bartlesville (NIPR) Lab	Land and Facilities	16.9 Acres and 189,000 sf	Will be sold by GSA for Fair Market Value	Closed on November 6, 1998, currently being processed as surplus out of the government inventory
FY 1998	1100 Area (Hanford)	Land and Facilities	768 Acres 365,000 sf	No consideration	Transferred to the Port of Benton 9/30/98
FY 1998	Railroad ROW (Hanford)	Railroad and 100 ft ROW	92 Acres (10.5 miles)	No consideration	Transferred to the Port of Benton 9/30/98
FY 1998	Snettisham Hydroelectric Project	Land and Easements	3,500 Acres	Legislated disposal	Privatized to State corporation
FY 1998	Naval Petroleum Reserve #1	Land, Facilities and Mineral Rights	48,145 Acres and 305,127 sf	Legislated disposal \$3.64 billion	Transferred on Feb 5, 1998. This is the largest \$ value Federal disposal ever.
FY 1998	LANL Fire Stations	Land and Facilities	5.592 Acres and 29,017 sf	Legislated disposal No consideration	P.L. 105-85 SEC. 3165.
FY 1998	LANL Water Plant	Facility and Easements	215 Acres	Facilities leased to further transfer. Disposal within 2 years Legislated disposal.	P.L. 105-85 SEC. 3165. 9-1-98, DOE leased operation of the Los Alamos Water Production System. Los Alamos County will operate the water production system for 1-2 years, after which the DOE will transfer the system to Los Alamos County.

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FY 1998	LANL Power Easements	Easements	[?] Acres	Legislated disposal No consideration	P.L. 105-85 SEC. 3165.
FY 1998	Bandelier National Monument Transfer	Land	4.47 Acres	Legislated disposal No consideration	P.L. 105-85 SEC. 3164.
FY 1998	ORO Old Barracks	Land and Facilities	3.51 Acres and 45,400 sf	Fair market exchange including allowance for standing timber	Excess property disposal
FY 1997	LANL Two Apartment Buildings	Land and Facilities	1.87 Acres 26,364 sf	No consideration	Transferred under authority of Atomic Communities Act of 1955 as amended
FY 1997	Eklutna Hydroelectric Project	Land and Facilities	803 Acres	Legislated disposal \$5,953,000.00	Privatized to State corporation
FY 1997	Weeks Island Pipeline Easement	50 ft ROW 67 miles long assignable perpetual easement	373 Acres	\$22,272,499.99	Excess property disposal (Weeks island site damaged by subsidence and closed)
FY 1997	Oxnard Plant	Land and Facilities	13.85 Acres and 86,000 sf	\$2,225,000.00	Excess property Disposed of by GSA as DOE-s sales agent
FY 1996	RLO (Parking lot)	Land	3.26 Acres	Will dispose at Fair Market Value	A not utilized parking lot. Other associated property to follow. GSA using to support Fed Bldg renovation and will dispose of later at Fair Market Value.
FY 1996	Idaho National Engineering and Environmental Laboratory	Land	160 Acres	\$41,600.00	Disposal of this land to GSA was based upon a request from Jefferson County, Idaho to assist them in providing additional space for a multi-county landfill.
FY 1996	Western Environmental Technology Office	Land and Facilities	53.15 Acres and 134,104 sf	\$3,200,000.00	Excess property. Fossil Energy laboratory disposed of through installment payments.
FY 1996	3000 Area (Hanford)	Land	71.15 acres	Inter-governmental transfer	Excessed to GSA on November 11, 1995. GSA transferred the deed to Maritime Administration as a port facility on September 13, 1996. Being used by Port of Benton.

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FY 1995	Addison Rd. Property, TX	Land	0.76 Acres	\$1,000.00	Land acquired by the Department under a court order related to the restitution settlement of a petroleum price overcharge. Disposed of by GSA
FY 1995	Wheatland Rd. Property, TX	Land	25.98 Acres	\$117,098.55	Land acquired by the Department under a court order related to the restitution settlement of a petroleum price overcharge. Disposed of by GSA.
FY 1995	Pinellas Plant, FL	Land and Facilities	96.35 Acres and 688,222 sf	\$2,600,000.00	Site was sold under the Department's authority to the St. Petersburg/Clearwater Economic Development Council. First 161g disposal.
FY 1995	Oak Ridge Reservation	Land	0.4 Acres	exchange	Conveyed to Methodist Medical Center in exchange for parcel 42
FY 1994	NO DISPOSALS				
FY 1993	Sulphur Mines Pipeline, LA	Perpetual Easement	108 Acres	\$31,750.00	Pipeline easement supporting the filling and removal of oil stored in sulphur mines was no longer needed. Disposed of under DOE EPCA authority.
FY 1993	Sulphur Mines Facility, LA	Land and Support Buildings	459.8 Acres and 6011 sf	\$400,000.00	Sulphur mines and support facilities originally acquired for the storage of oil. Disposed of under DOE EPCA authority.
FY 1993	Oak Ridge Reservation Parcel AA (3)@	Land	170.86 Acres	\$683,440.00	Conveyed to City of Oak Ridge under Atomic Communities Act agreement
FY 1992	Oak Ridge Reservation Parcel AA (2)@	Land	532.59 Acres	\$1,113,000.00	Conveyed to City of Oak Ridge under Atomic Communities Act agreement
FY 1991	NO DISPOSALS				